

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID ARTHUR BROWAND,  
Petitioner,

v.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION,  
Respondent.

No. 2:21-cv-0184-JAM-EFB P

ORDER

Petitioner, a state prisoner proceeding without counsel, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On August 26, 2021, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Neither party has filed objections to the findings and recommendations. Petitioner has, however, filed a motion to stay these proceedings and “remand” the case to the California Supreme Court to allow him to exhaust his unexhausted claims. ECF No. 18.

The court has reviewed the file and finds the findings and recommendations to be supported by the record and by the magistrate judge’s analysis. The court cannot remand the case

1 to the California Supreme Court; if petitioner wishes to present his unexhausted claims there, he  
2 must file directly with that court. Nor can the court grant petitioner's current request to stay the  
3 case. As the magistrate judge informed petitioner in the findings and recommendations, to stay a  
4 petition that contains both exhausted and unexhausted claims, the court must find good cause to  
5 do so. ECF No. 17 at 3-4. Petitioner has not attempted to show good cause. As the findings and  
6 recommendations further informed, petitioner may ask the court to stay the case without a  
7 showing of good cause under Kelly v. Small, 315 F.3d 1063 (9th Cir. 2002) only after he has filed  
8 an amended petition that contains only the claims that are currently exhausted.

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. The findings and recommendations filed August 26, 2021, are adopted in full;
- 11 2. Respondent's April 30, 2021 motion to dismiss (ECF No. 9) is GRANTED;
- 12 3. The petition is dismissed with leave to amend to file a petition containing only  
13 exhausted claims within thirty days from the date of service of this order; and
- 14 4. Petitioner's August 26, 2021 motion to stay and remand (ECF No. 18) is denied  
15 without prejudice. Petitioner may renew his request to stay the case after he has filed an amended  
16 petition containing only exhausted claims.

17  
18  
19 Dated: October 14, 2021

/s/ John A. Mendez

---

THE HONORABLE JOHN A. MENDEZ  
UNITED STATES DISTRICT COURT JUDGE